IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FRANCESCA WHITE,
CARL CORONA, and ADRIAN PADILLA

Plaintiffs,

v. **1:12-cv-01118-KBM-ACT**

STEPHEN DEVOTTI,
in his individual and official capacity,
ROBERT WASHBURN JR., in his individual capacity,
DAN HOUSTON Sheriff of Bernalillo County,
BOARD OF COUNTY COMMISSIONERS
FOR THE COUNTY OF BERNALILLO

Defendant.

FIRST AMENDED COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

Plaintiffs Francesca White, Adrian Padilla, and Carl Corona, by and through their counsel of record, Law Office of Frances Crockett (Frances C. Carpenter) bring this, their First Amended Complaint for violation of their civil rights under the Fourth and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983 as well as pendant State law claims. Plaintiffs allege as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 42 U.S.C. §§1983, 1988 and 28 U.S.C. § 1343, with pendent jurisdiction over the state law claims. Venue is proper in this district as Defendant is a resident of New Mexico and all of the acts complained of occurred in New Mexico. Plaintiffs' causes of action arose in New Mexico.

PARTIES

2. Plaintiff Francesca White (hereinafter "White") is a resident and citizen of the state of New

Mexico.

3. Plaintiff Carl Corona (hereinafter "Corona") is a resident and citizen of the state of New Mexico.

4. Plaintiff Adrian Padilla (hereinafter "Padilla") is a resident and citizen of the state of New Mexico.

5. Defendant Dan Houston is the Sheriff of Bernalillo County. At all pertinent times, Houston was acting in the course and scope of his employment and under color of state law, and had final supervisory and policy-making authority over the Bernalillo County Sherriff's Office (hereinafter "BCSO").

6. Defendant Stephen Devotti was, at all relevant times herein, a resident of the state of New Mexico and a law enforcement officer employed by the Bernalillo County Sheriff's Department, a governmental agency operated by the County of Bernalillo (hereinafter "Devotti").

7. At all times material to this complaint, Defendant Devotti was acting within the scope of his employment and under color of state law. Defendant Devotti is being sued in his individual and official capacity.

8. Defendant Robert Washburn Jr. was, at all relevant times herein, a resident of the state of New Mexico (hereinafter "Washburn"). Upon information and belief, Defendant Washburn was a former Texas law enforcement employee.

9. Board of County Commissioners for the County of Bernalillo ["Bernalillo County"] is a local governmental entity organized and existing under the law of the State of New Mexico and is a "person" subject to suit herein.

10. Some Defendants who had contact with Plaintiffs were law enforcement officers within the meaning of NMSA 41-4-12.

11. Immunity is waived for the actions described herein under 41-4-12 (deprivation of rights under state and federal constitution.

FACTUAL BACKGROUND

12. On or about the morning of August 14, 2011, Plaintiffs, along with Krystal Gutierrez, went to the Frontier Restaurant in Albuquerque, New Mexico for breakfast.

13. Upon arriving at the Frontier Restaurant, Plaintiffs and their friend sat at an empty table near the main entrance. Plaintiffs got up to allow the table to be cleaned and as they waited for the table to be cleaned Defendants Devotti and Washburn sat down at the table.

14. Plaintiff Padilla explained to Defendants Devotti and Washburn that they had been sitting at the table.

15. In response to Plaintiffs assertions, Defendant Devotti and Washburn became hostile and Devotii stated that he was a “cop” and would not relinquish the table.

16. Defendant Devotti displayed his BCSO issued badge and gun to Plaintiffs, and told Plaintiffs that if they “wanted problems [they’d] be in a world of hurt.”

17. Not wishing the minor dispute to escalate, Plaintiffs and their friends walked away from Defendants and selected another table in the restaurant.

18. Concerned for their safety, Plaintiffs informed management of the altercation exited the Frontier Restaurant through a second entrance and walked along Central Avenue.

19. While outside the restaurant, Plaintiffs walked past the table where Defendants Devotti and Washburn were sitting.

20. As Plaintiff White passed the table, she noticed that Defendant Devotti was staring at her through the window. Plaintiff White gestured towards the Defendants and continued to walk along the sidewalk.

21. A few seconds later, Plaintiff White heard a loud crash as Defendants Devotti and Washburn ran out the door.

22. Defendant Devotti violently shoved Plaintiff White to the ground. Plaintiff White struck the concrete sidewalk, receiving cuts and bruises to her hands. The force of the impact was so great that Plaintiff White felt and heard her neck pop.

23. As Defendant Devotti positioned himself to strike Plaintiff White, Plaintiff Corona intervened by placing himself between them.

24. Defendant Devotti then proceeded to strike and punch Plaintiff Corona in the face, eye, and back resulting in cuts and bruises to Plaintiff Corona's face. Plaintiff Corona was able to escape and run away.

25. Devotti then pulled out his BCSO issued gun and told Corona to, "stop, or I'll shoot." Corona fearing he was going to die, begged Devotti not to shoot him.

26. For unknown reasons Devotti stopped chasing Corona allowing Corona to promptly dial 911 to report the incident.

27. Based on Defendant's display of his badge of office and his continuing exercise of extreme physical force, Plaintiff White was not able to leave the scene of the incident and she remained in Defendants' custody.

28. At or about the same time as Defendant Devotti's assault on Plaintiff White, Defendant Washburn also struck and battered Plaintiff Padilla. Defendant Washburn grabbed Plaintiff Padilla, violently pushed him against the wall, pulled out a concealed handgun, and held it to Plaintiff Padilla's head. Defendant Washburn taunted Plaintiff Padilla saying, "what are you going to do about it, you fucking faggot?"

29. Before Albuquerque Police Officers arrived on scene, Plaintiff Padilla was able to escape

and run to safety.

30. Patrons of the Frontier Restaurant contacted 911 emergency dispatch during the incident, informing law enforcement authorities that a male with a gun was holding another male against the wall of the restaurant.

31. Defendants continued to unlawfully detain Plaintiff White until Albuquerque Police Department officers arrived on the scene. As soon as Plaintiff Corona saw flashing lights, he returned to the scene to give a statement and learned that Devotii immediately showed his badge to the Albuquerque Police Officers who responded to the 911 calls and informed him that he was law enforcement.

32. Plaintiffs were afraid of Devotti and Washburn.

33. No criminal charges were brought against Plaintiffs or Defendants as a result of this incident.

34. Following the incident, Defendant Devotti was the subject of an internal investigation by the Bernalillo County Sheriff's Department.

35. As a result of this incident and the subsequent investigation, Defendant Devotti was terminated from the Bernalillo County Sheriff's Department.

COUNT I – UNLAWFUL SEIZURE IN VIOLATION OF FOURTH AND FOURTEENTH AMENDMENTS AGAINST DEFENDANT DEVOTTI AND WASHBURN

36. Plaintiffs hereby incorporate all preceding paragraphs as though fully set forth herein.

37. Defendant Devotti and Washburn, while acting under color of law, seized Plaintiffs White, Padilla, and Corona on August 14, 2011 without reasonable suspicion or probable cause to believe that Plaintiffs had committed or were committing a crime, and without a warrant or exigent circumstances.

38. Defendants' actions in seizing Plaintiffs and the manner in which Defendants effected Plaintiffs' seizure was objectively unreasonable, intentional, willful, and/or wanton, and done in gross and reckless disregard of the Plaintiffs' well-established Constitutional rights.

39. Defendants' unlawful seizure of Plaintiffs proximately caused Plaintiffs to suffer damages and injuries. These damages include physical pain and suffering, lost liberty, and psychological and emotional distress.

40. WHEREFORE, Plaintiffs White, Padilla, and Corona request compensatory and punitive damages against Defendant Devotti and Washburn, together with all reasonable costs and attorney's fees.

COUNT II –EXCESSIVE USE OF FORCE IN VIOLATION OF FOURTH AND FOURTEENTH AMENDMENTS

41. Plaintiffs hereby incorporate all preceding paragraphs as though fully set forth herein.

42. Defendant Devotti and Washburn used excessive force in seizing and detaining Plaintiffs on August 14, 2011, as set forth in the preceding paragraphs above.

43. Defendants used the level of force described above without reasonable suspicion or probable cause to believe that Plaintiffs had committed any crime, and without reasonable suspicion or probable cause to believe that Plaintiffs posed a physical danger to anyone, and without giving Plaintiffs an opportunity to comply with any lawful requests. The level of force used was grossly disproportionate to the circumstances, was objectively unreasonable, was intentional, willful, and wanton, and was done in gross and reckless disregard of the Plaintiffs' well-established Constitutional rights.

44. Defendants' use of excessive force proximately caused Plaintiffs' damages and injuries, including physical injuries, physical pain and suffering, lost liberty, and psychological and

emotional distress.

45. WHEREFORE, Plaintiffs request compensatory and punitive damages against Defendant Devotti and Washburn, together with all costs and attorney's fees.

COUNT III –STATE INTENTIONAL TORT CLAIMS

46. Plaintiffs hereby incorporate all preceding paragraphs as though fully set forth herein.

47. The actions of Defendants were not justified or privileged under state law.

48. Defendants' use of force against Plaintiffs, including but not limited to drawing deadly weapons on them, threatening to shoot them, and physically assaulting and battering them constitutes, among other things, assault and battery.

49. Additionally, Defendants Devotti and Washburn intentionally and unlawfully detained Plaintiffs and such constitutes falsely arrest and falsely imprisonment.

50. The County of Bernalillo received actual notice of the occurrence within the meaning of the New Mexico Tort Claims Act.

51. The Defendant Bernalillo County Board of Commissioners is liable under the doctrine of *respondeat superior*.

52. Defendants' actions as set forth above proximately caused Plaintiffs damages and injuries. These damages include physical pain and suffering, lost liberty, and psychological and emotional distress.

53. WHEREFORE, Plaintiffs request compensatory and damages against Defendants Devotti and Washburn together with all costs and fees.

COUNT IV - SUPERVISORY LIABILITY

54. Plaintiffs hereby incorporate all preceding paragraphs as though fully set forth herein.

55. Defendant Bernalillo County Board of Commissioners is directly liable for the wrongful

actions of its final policymaker, Defendant Sheriff Dan Houston.

COUNT V – NEGLIGENT HIRING, TRAINING, SUPERVISION AND RETENTION

56. Plaintiffs hereby incorporate all preceding paragraphs as though fully set forth herein.

57. Defendant Dan Houston and Bernalillo County Board of Commissioners were negligent in hiring, training1, supervision and retention of Defendant Devotii.

Defendants' negligence includes all things mentioned in the Facts stated herein but not limited to:

a. Inadequate screening of the Defendant Devotii as a perspective employee;

b. Inadequate management, training, and enforcement of policies regarding citizen encounters, proper police work, and knowledge of the law that Defendant Devotii was given the privilege to enforce;

c. Placement or retention of Defendant Devotii in a direct community service and law enforcement position; and

d. Inadequate supervision of Defendant Devotii.

As a proximate result of Defendants' negligence in hiring, training, supervision and retention of Defendant Devotii, Plaintiffs suffered and continue to suffer compensatory damages.

58. Defendants' negligence in hiring, training, supervision and retention of Defendant Devotii was wanton entitling Plaintiffs to punitive damages against Defendants.

JURY TRIAL DEMAND

1 The individual responsible for training programs (typically the government's final policymaker for such issues) is liable in his individual capacity for the plaintiff's injury. This liability can attach even if the individual was not involved in the deprivation. As explained in Belcher v. City of Foley, 30 F.3d 1390 (11^{th} Cir. 1994), supervisory liability can attach when the "'failure to train amounts to deliberate indifference to the rights of persons with whom subordinates come into contact' and the failure has actually caused the injury of which the plaintiff complains." Id. at 1397, *quoting in part* Popham v. City of Talladega, 908 F.2d 1561, 1564-65 (11^{th} Cir. 1990).

59. Plaintiffs hereby demand a trial by jury.

Respectfully submitted,

LAW OFFICE OF FRANCES CROCKETT

/s/Frances C. Carpenter

Frances C. Carpenter
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/s/Frances C. Carpenter
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COUNT III –STATE INTENTIONAL TORT CLAIMS

46. Plaintiffs hereby incorporate all preceding paragraphs as though fully set forth herein.

47. The actions of Defendants were not justified or privileged under state law.

48. Defendants' use of force against Plaintiffs, including but not limited to drawing deadly weapons on them, threatening to shoot them, and physically assaulting and battering them constitutes, among other things, assault and battery.

49. Additionally, Defendants Devotti and Washburn intentionally and unlawfully detained Plaintiffs and such constitutes falsely arrest and falsely imprisonment.

50. The County of Bernalillo received actual notice of the occurrence within the meaning of the New Mexico Tort Claims Act.

51. The Defendant Bernalillo County Board of Commissioners is liable under the doctrine of *respondeat superior*.

52. Defendants' actions as set forth above proximately caused Plaintiffs damages and injuries. These damages include physical pain and suffering, lost liberty, and psychological and emotional distress.

53. WHEREFORE, Plaintiffs request compensatory and damages against Defendants Devotti and Washburn together with all costs and fees.

COUNT IV - SUPERVISORY LIABILITY

54. Plaintiffs hereby incorporate all preceding paragraphs as though fully set forth herein.

55. Defendant Bernalillo County Board of Commissioners is directly liable for the wrongful

actions of its final policymaker, Defendant Sheriff Dan Houston.

COUNT V – NEGLIGENT HIRING, TRAINING, SUPERVISION AND RETENTION

56. Plaintiffs hereby incorporate all preceding paragraphs as though fully set forth herein.

57. Defendant Dan Houston and Bernalillo County Board of Commissioners were negligent in hiring, training1, supervision and retention of Defendant Devotii.

Defendants' negligence includes all things mentioned in the Facts stated herein but not limited to:

a. Inadequate screening of the Defendant Devotii as a perspective employee;

b. Inadequate management, training, and enforcement of policies regarding citizen encounters, proper police work, and knowledge of the law that Defendant Devotii was given the privilege to enforce;

c. Placement or retention of Defendant Devotii in a direct community service and law enforcement position; and

d. Inadequate supervision of Defendant Devotii.

As a proximate result of Defendants' negligence in hiring, training, supervision and retention of Defendant Devotii, Plaintiffs suffered and continue to suffer compensatory damages.

58. Defendants' negligence in hiring, training, supervision and retention of Defendant Devotii was wanton entitling Plaintiffs to punitive damages against Defendants.

JURY TRIAL DEMAND

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1 The individual responsible for training programs (typically the government's final policymaker for such issues) is liable in his individual capacity for the plaintiff's injury. This liability can attach even if the individual was not involved in the deprivation. As explained in Belcher v. City of Foley, 30 F.3d 1390 (11th Cir. 1994), supervisory liability can attach when the "'failure to train amounts to deliberate indifference to the rights of persons with whom subordinates come into contact' and the failure has actually caused the injury of which the plaintiff complains." Id. at 1397, *quoting in part* Popham v. City of Talladega, 908 F.2d 1561, 1564-65 (11th Cir. 1990).

59. Plaintiffs hereby demand a trial by jury.

Respectfully submitted,

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